Supreme Court, U.S.
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No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1995

NABIL GHALI,

Petitioner,

vs.

COMMONWEALTH OF KENTUCKY,

Respondent.

Petition for Writ of Certiorarit to the Campbell County, Kentucky Circuit Court

PETITION FOR WRIT OF CERTIORARI

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For Petitioner

January 18, 1996.

QUESTION PRESENTED FOR REVIEW

Whether the petitioner was afforded effective assistance of counsel at his 1982 bench trial which resulted in his conviction for six counts of unlawful transaction with a minor.

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Nabil Ghali, respectfully prays that a writ of certiorari issue to review the judgment of the Campbell County, Kentucky Circuit Court entered on February 1, 1995 which became final on August 16, 1995.

OPINIONS BELOW

The opinion of the Campbell County, Kentucky District Court entered on November 22, 1994 is not reported. The opinion of the Campbell County, Kentucky Circuit Court entered on February 1, 1995 is not reported. The orders of the Court of Appeals of Kentucky entered on April 18, 1995 and the Supreme Court of Kentucky entered on August 16, 1995 are not reported. All are reprinted in the Appendix.

JURISDICTION

Relying on Kentucky Civil Rule 60.02, petitioner on April 25, 1994 filed a motion to set aside his 1982 convictions in the Campbell District Court. The Campbell District Court denied the motion on November 22, 1994. Petitioner appealed to the Campbell Circuit Court which affirmed the decision of the lower court on February 1, 1995. Petitioner then sought discretionary review in the Court of Appeals of Kentucky, which was denied on April 18, 1995 and the Supreme Court of Kentucky, which was denied on August 16, 1995.

The jurisdiction of this Court to review the judgment of the Campbell County, Kentucky Circuit Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The Sixth Amendment to the United States

Constitution:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

The Fourteenth Amendment to the United States

Constitution, Section 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

On October 15, 1982 Dr. Nabil Ghali was charged with six counts of unlawful transaction with a minor, Kimberly Kramer, in the juvenile division of Campbell District Court. He was arraigned on October 20, 1982, appearing without counsel (Transcript of Arraignment and Trial, hereinafter, T, p. 1). The court advised Dr. Ghali that the prosecutor had told him that Dr. Ghali's attorney had called and wanted a bench trial (T., p. 1). The court did not mention to Dr. Ghali that he had the right to trial by jury.

On November 10, 1982, only three weeks after arraignment, trial began (T, p. 2). Assistant County Attorney Williams asked that Ann Richards be able to remain

in the courtroom because he intended to call her "in the nature of a consultant expert who has not interviewed the child or has any, any direct contact with this case" (T, p. 2). **Defense counsel stated that he had no objection (T, p. 2).** The first witness was Mary Elaine Billmire, pediatrician at Children's Hospital and head of the Child Abuse Team (T, p. 5). Dr. Billmire offered that she's seen about 1,000 victims of rape or child abuse (T, p. 6). Moreover, she testified that she is familiar with "the term referred to as sex abuse syndrome, rape trauma syndrome" (T, p. 6). She explained the concept:

> Children involved ... children who are sexually abused. Physically this involves, well children really of any age, who are involved in sexual contact which may range anything from fondling, seduction on to complete intercourse. Children

> are usually seduced or coerced into this behavior, as opposed to compelled by physical violence. They typically are afraid to tell right after it happened. They are reluctant to tell for many reasons. They often feel that it is their fault, even when it is not. People tend not to believe children, even though in my experience and the experience of other experts, children do not make up stories of sexual assault.

(T, p. 6).

Dr. Billmire also testified that since children don't tell about sex abuse right away and since there is rarely physical evidence "we base a lot of it on the story that the child gives" (T, p. 7). She also opined that if a child has been sexually abused by someone she knows or trusts "she may have a life-long standing problems as far as willing to trust other people in the future ..." (T, p. 7). And

the doctor described general behavior symptoms one might expect (T, pp. 7-8).

Regarding Kimberly Kramer, Dr. Billmire said she examined her on November 8, 1982 and "the physical abnormalities were confined to the genital region" (T, p. 8). The "abnormality" was that the hymen was torn in several places (T, p. 8). Dr. Billmire said her findings were consistent with Ms. Kramer's history - intercourse but an infrequent number of times (T, pp. 8-9). On cross-examination the doctor denied that anything else besides tampons could cause such tearing of the hymen and volunteered that Kimberly Kramer did not use tampons (T, p. 10). **Defense counsel asked two questions on cross (T, p. 10).**

Mary Lou Kramer, Kimberly's mother,

related that Kimberly was a 14 year old freshman (T, p. 12). The family had known Dr. Ghali for about nine years (T, pp. 13-14). Around the time of an August 1982 vacation Kim cried herself to sleep almost every night and would not say why (T, p. 17). She also put on 10 to 15 pounds (T, p. 18). During vacation Kim often brought up talking to Dr. Ghali about her problem (T, p. 18). Sometime in September her sister-in-law told her about Kim's allegations (T, pp. 19-20). When she confronted Kim she cried and was afraid she was pregnant (T, p. 20).

On cross, Ms. Kramer stated that she and Dr. Ghali live about two miles apart (T, p. 22). Kim once rode a bike to Dr. Ghali's house and once walked from another location three blocks away (T, pp. 23-24).

These visits took place in August or September 1982. When Ms. Kramer picked Kim up she didn't seem any different than usual (T, p. 24). Ms. Kramer acknowledged that her family moved into Dr. Ghali's house for a week while he was in Utah in 1981 (T, pp. 27-28).

Laura Richards, director at the Rape Crisis Center and a social worker, also testified (T, p. 46). Mr. Williams asked her questions about her experience dealing with victims of child sex abuse and participating in training (T, pp. 47-49). He then offered Ms. Richards "as an expert in the field of sexual abuse, or child syndrome ..." (T, p. 49). **The defense offered no objection.** Ms. Richards related that she had been in the courtroom during the testimony and then described

the confusion of a child who is abused by someone she knows (T, pp. 49-50). She explained that an adolescent child may see a sexual approach romantically (T, p. 50). She also testified that a child's failure to report an incident for some period would not undercut the child's credibility (T, p. 50). Ms. Richards was then asked about various aspects of Kim's behavior - failure to report for some time, reporting to someone other than her parents, crying herself to sleep, weight gain, and the witness described each as "typical" for sex abuse victims (T, pp. 51-52). **Defense counsel asked two questions on cross (T, p. 53).**

Kim Kramer testified that she'd never been on a date before August 1982 (T, p. 58). She denied having anything in her

vagina prior to that time (T, p. 59). About a week prior to vacation she and her sister went to Dr. Ghali's house (T, pp. 59-60). The sister and Dr. Ghali's son went to play at a neighbor's home (T, p. 60). Ms. Kramer stated that she went to put on her bathing suit in the basement; when she came out Dr. Ghali was in a room with a waterbed and told her to take off her suit (T, p. 61). Then he took off his suit and hers and laid her on the bed (T, p. 61). He rubbed his penis between her legs and then went inside her (T, pp. 61-62). This hurt (T, p. 62). Dr. Ghali was "breathing real funny" (T, p. 62). He then "put his fingers down there and played around down there and put his fingers inside" (T, p. 63).

Kim acknowledged she did nothing to

stop Dr. Ghali (T, p. 63). She said she was really confused and really trusted him and agreed she was also curious about sex (T, p. 64). Kim went outside and swam in the pool afterward (T, p. 64). About half an hour later, according to the witness, she was in the Jacuzzi and Dr. Ghali came in and moved his bathing suit and hers and came inside her again (T, p. 65). Later that day he told her not to tell (T, p. 65).

Kim then liked Dr. Ghali a lot, like he was a boyfriend and thought maybe they would get married (T, p. 66). She felt more grown up (T, p. 66). When she returned from vacation on a Friday she and her family went to Dr. Ghali's (T, p. 67). She and Dr. Ghali were in the basement and he "did the finger thing to me again" (T,

p. 67). He also supposedly gave her a hug and said he was glad she was back (T, p. 68). On August 29, the day of the fish fry, she went to Dr. Ghali's intending to tell him she didn't want to do this anymore and thought it was "gross" (T, p. 68). Instead they went in Dr. Ghali's bedroom and he took off his shorts, rubbed his penis up and down between her legs and went inside again (T, pp. 69-70). Supposedly he said she could scream if she wanted since no one else was there (T, p. 70). He then sucked her breasts and licked between her legs (T, p. 71). She saw white stuff on Dr. Ghali's penis (T, p. 72).

Kim went to Dr. Ghali's house one more time, in September, while her parents were up the street at a hardware store (T,

p. 73). Dr. Ghali allegedly had intercourse with her and did "the finger thing" on the floor (T, pp. 74-75). Then he told her not to tell anybody (T, p. 76). He also asked her if she'd had enough sexual activity (T, p. 76).

Kim first told her 17 year old step-sister she might be pregnant by a senior at Highlands (T, p. 77). She wasn't sure if her step-sister would believe her if she named Dr. Ghali (T, p. 78). She then told her aunt who asked if she could tell her mother (T, p. 78). On cross Kim said she went to Dr. Ghali's at about 1:30 on August 2 and saw none of the Anseri family there (T, p. 80). When she returned from vacation she told Dr. Ghali she had dreams about his house (T, p. 83).

After several character witnesses testified (T., pp. 29-102) Dr. Ghali testified (T, p. 103). He became friends with the Kramer family about two and a half years ago (T, p. 104). He described their unauthorized move into his home in 1981 (T, p. 104). Dr. Ghali discovered they were living in his house when he found their phone number had been transferred there (T, pp. 104-105). They remained in his home three and a half weeks (T, pp. 104-105).

Dr. Ghali related that on August 2, his cousin Tony Janji was living at his house (T, p. 106). Mr. Janji needed to have a blood test so Mr. Anseri picked him up (T, p. 107). The test lasted until about 1:30 or 2:00 (T, p. 107). Dr. Ghali left work at 12:30 p.m., picked up his son

and then later picked up his cousin at the lab (T, p. 108). They returned home at about 3:00 or 3:30 (T, p. 108). Dr. Ghali said that Mr. Kramer and his two daughters came over about 4:30 p.m. (T, p. 108).

Dr. Ghali said Kim did ride her bicycle to his house on a Sunday right before school began (T, p. 109). Dr. Ghali thought this was very weird (T, p. 110). Kim had never come by herself before and Dr. Ghali had visitors, the Anseris (T, p. 110). Kim said she had come for her sunglasses (T, p. 110). Dr. Ghali then called her father and he came over and picked her up (T, p. 110). Dr. Ghali said he did not see Kim on September 5 or September 19 at all (T, p. 111). Dr. Ghali denied ever touching Kim in a sexual manner (T, p. 117).

Nicholas Anseri, who'd known Dr. Ghali nearly ten years, testified next (T, pp. 155-156). Mr. Anseri owns a lab (T, p. 156). He identified a glucose tolerance test for Tony Janji dated August 2, 1982 (T, p. 156). Mr. Janji would have been there five hours - from about 9:00 a.m. until about 2:00 p.m. (T, pp. 156-157). Mr. Anseri picked up Mr. Janji at Dr. Ghali's and gave him a ride to the lab (T, p. 162). Mr. Anseri remembered a different occasion when Kim Kramer arrived at Dr. Ghali's house by bicycle (T, p. 157). Dr. Ghali was surprised and called her father who came to pick her up (T, p. 158). Mr. Anseri believes that Dr. Ghali's reputation in the community is "clean" (T, p. 158).

The Judge made a finding that Dr. Ghali was guilty of all counts (T, pp. 197-198). He set a $10,000 bond pending sentencing (T, pp. 198-199). The court suggested an independent psychologist exam (T, pp. 199-200). On January 13, 1983 the court sentenced Dr. Ghali to a year in jail on each count. He also assessed a $500.00 fine on each count but probated the $2,000.00 "under the condition that the defendant make a donation to the Northern Kentucky Women's Crisis Center in the amount of $2,000.00." The court also ordered Dr. Ghali to pay for all medical, psychological or psychiatric treatment for the victim.

PROCEEDINGS BELOW

Ghali filed his Motion Pursuant to

Kentucky CR 60.02(f)[1] to Vacate on April 25, 1994. The Commonwealth filed an objection urging that CR 60.02 is inapplicable to criminal cases or that the motion was untimely. Ghali served a response citing cases which hold that 60.02 is applicable to criminal cases and specifically asserted that a hearing was necessary if the court had any questions about whether the motion was filed within a reasonable time. Ghali also served a motion for a hearing on his motion to vacate to which the Commonwealth filed no response.

---

[1]CR 60.02(f) provides that "on motion, a court may, upon such terms as are just, relieve a party or his legal representative from its final judgment, order or proceeding upon the following grounds ... any other reason of any extraordinary nature justifying relief."

On November 22, 1994, without conducting a hearing, Campbell District Judge Gregory T. Popovich entered an Order which provided as follows:

> This court has carefully reviewed the extensive file in this case in light of Civil Rule 60.02(f). Even assuming arguendo that Civil Rule 60.02(f) is applicable in this case, any motion under that rule must be filed within a reasonable time. The written motion cannot meet that standard. The original conviction occured in 1982. The appeal process ended on March 31, 1986. No facts are presented in defendant's brief which are relevant and were not available at that time. As a result, said motion is denied.

The Campbell Circuit Court affirmed petitioner's conviction on direct appeal on February 1, 1995. The Court of Appeals denied discretionary review on April 18, 1995 and the Supreme Court denied discretionary review on August 16, 1995.

STAGE WHERE FEDERAL QUESTIONS RAISED

In his CR 60.02 motion filed in the Campbell District Court petitioner Ghali urged that he was denied effective assistance of counsel contrary to the Sixth and Fourteenth Amendments, United States Constitution (CR 60.02 Motions, pp. 11, 13). Ghali specifically asserted that he was "deprived of his right to effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments, United States Constitution." On direct appeal to the Campbell Circuit Court petitioner made the same constitutional claim (Statement of Appeal, p. 14). Neither the Campbell District Court nor the Campbell Circuit Court actually addressed the merits of petitioner Ghali's constitutional claim.

REASONS FOR GRANTING THE WRIT

I. STATE COURTS SHOULD NOT BE PERMITTED TO IGNORE FLAGRANT CONSTITUTIONAL VIOLATIONS.

Nabil Ghali is a physician. His 1982 misdemeanor convictions have not only left him with a permanent stigma but have also caused him to lose his license to practice medicine. Dr. Ghali was represented in this serious matter by an attorney who handled his civil affairs but did not generally practice criminal law. Some examples of his constitutionally inadequate representation are as follows:

A. COUNSEL'S FAILURE TO SECURE ADEQUATE TIME FOR TRIAL PREPARATION.

i) Counsel was not an experienced criminal defense attorney, but he nevertheless proceeded to trial within less than a month of arraignment.

B. COUNSEL'S FAILURE TO ADVISE PETITIONER TO REQUEST A JURY TRIAL.

Dr. Ghali is a native of Egypt who was very unfamiliar with the American legal system. His attorney did not advise him that he had a constitutional right to a jury trial and that, tactically, a jury trial was the only appropriate choice. Attached to the original motion was a signed affidavit by James S. Bowman dated January 27, 1983 which confirms that Mr. Bowman did not advise Dr. Ghali concerning his right to a jury trial.

C. COUNSEL'S FAILURE TO INVESTIGATE PRIOR TO TRIAL:

i) Interviewed few, if any, witnesses.

ii) Failed to research and understand the law concerning the charge of unlawful transaction with a minor.

iii) Did not consult with experts who would have advised that a torn hymen does not equal proof of intercourse and that "sex abuse accommodation syndrome" was not an accepted theory.

D. COUNSEL FILED INADEQUATE, IF ANY, PRETRIAL MOTIONS.

i) Counsel did not investigate or challenge prior to trial:

1. Extensive, prejudicial pretrial publicity and/or discussion by a motion for change of venue.

2. The inadmissibility of testimony to be presented by the Commonwealth.

E. COUNSEL FAILED TO ADVOCATE WITH ZEAL ON BEHALF OF DR. GHALI DURING TRIAL BEFORE THE BENCH. COUNSEL:

i) gave no opening statement;

ii) failed to cross-examine crucial witnesses adequately;

iii) failed to prepare the defense witnesses to testify in a coherent manner;

iv) presented a closing argument which was brief and unpersuasive.

F. COUNSEL FAILED TO MAKE CRITICAL OBJECTIONS AND MOTIONS DURING PETITIONER'S TRIAL. COUNSEL:

i) did not object to Ms. Richards remaining in the courtroom;

ii) did not object to improper "child sex abuse accommodation syndrome" testimony by Dr. Billmire and Ms. Richards who was employed by the Rape Crisis Center;

iii) did not object to the prosecutor's repeated interruptions of his client;

iv) did not object to the

prosecutor's repeated leading of witnesses.

Petitioner asserts that the outcome of his trial surely would have been different if counsel had not represented him ineffectively. He received the maximum sentence for a misdemeanor, twelve months in jail and a $500.00 fine on each charge, after a bench trial. Most critically, counsel should have advised petitioner that he had the constitutional right to a jury trial and that he should exercise that right. Jurors are notoriously skeptical of sex offenses case when the complaining witness and/or her family had obvious motives to lie and she was a willing participant in any sexual acts. At a jury trial an acquittal would have been likely.

In spite of the obvious defects in Ghali's convictions, the lower courts ignored constitutional challenges. State courts should not be permitted to ignore flagrant constitutional violations. The writ should issue.

II. THIS BENCH TRIAL WAS A TRAVESTY OF JUSTICE.

Aside from the claim of ineffective assistance of counsel, Nabil Ghali asserted in his 60.02 motion other claims about why his conviction was constitutionally invalid. First, he claimed he was denied a fair trial because the prosecutor later represented the victim in a civil suit against him. Ghali furnished the court with a copy of the civil complaint. Such representation was im-proper. See KBA v. Lovelace, Ky., 778 S.W.2d 651 (1989). Second, he asserted

that the admission of alleged expert testimony that children do not lie about sexual abuse and that the alleged victim was abused deprived him of a fair trial.

Without objection from the defense, the prosecutor called two alleged experts concerning child sex abuse accommodation syndrome. Whether either Dr. Billmire or Ms. Richards are "experts" in this area at all is highly questionable. What is certain is that their testimony was inadmissible. Both witnesses stated, in effect, that Kim Kramer was a victim of sexual abuse, which was the ultimate issue for the court. Additionally, Dr. Billmire advanced the now discredited notion that children never lie about such matters. The introduction of this "expert" testimony was highly prejudicial.

Numerous Kentucky decisions hold that child sex abuse accommodation evidence is inadmissible. See Hellstrom v. Commonwealth, Ky., 825 S.W.2d 612 (1992); Brown v. Commonwealth, Ky., 812 S.W.2d 502 (1991); Mitchell v. Commonwealth, Ky., 777 S.W.2d 930 (1989); Lantrip v. Commonwealth, Ky., 713 S.W.2d 816 (1986); Bussey v. Commonwealth, Ky., 697 S.W.2d 139 (1985). Its admission at this 1982 trial was obvious error and should result in a new trial.

CR 60.02 allows a judgment to be set aside for "any other reason of an extraordinary nature justifying relief." Ghali presented several "extraordinary circumstances."

CR 60.02 is available to challenge final judgments in both civil and criminal

cases in extraordinary circumstances. See Tewallen v. Commonwealth, Ky.App., 584 S.W.2d 748 (1979); Goodlet v. Commonwealth, Ky.App., 825 S.W.2d (1992); Deemer v. Finger, Ky., 817 S.W.2d 435, 437-439 (1991).

This is an "extraordinary circumstance." Dr. Ghali's trial was a travesty of justice. Much of the testimony presented by the Commonwealth was inadmissible and highly prejudicial. Dr. Ghali's lawyer was obviously inexperienced and unprepared to deal with the prosecutor in this case. That there was a bench trial at all starkly reveals counsel's ineptitude. The consequences of this conviction have been devastating to Dr. Ghali. Most seriously, he lost his Kentucky medical license because of the

conviction. This Court should grant certiorari.

CONCLUSION

For the reasons set forth in this Petition, Nabil Ghali respectfully requests that a writ of certiorari issue to review the Judgment of the Campbell County, Kentucky Circuit Court.

Respectfully submitted,

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Dated 11/22/94

COMMONWEALTH OF KENTUCKY
CAMPBELL DISTRICT COURT
DIVISION NO. I
CASE NO. 82-j-854, 855, 856, 858

COMMONWEALTH OF KENTUCKY **PLAINTIFF**

VS.

NABIL GHALI **DEFENDANT**

ORDER

A motion to vacate the original judgment herein pursuant to Civil Rule 60.02(f) was filed by the defendant on April 25, 1994. A response to said motion was filed by the Commonwealth on the same date.

This Court has carefully reviewed the extensive file in this case in light of Civil Rule 60.02(f). Even assuming arguendo that Civil Rule 60.02(f) is applicable in this case, any motion under that rule must be filed within a

reasonable time. The written motion cannot meet that standard. The original conviction occurred in 1982. The appeal process ended on March 31, 1986. No facts are presented in defendant's brief which are relevant and were not available at that time. As a result, said motion is denied.

SO ORDERED THIS 22nd DAY OF NOVEMBER, 1994.

_____
Gregory T. Popovich
Campbell District Judge

cc: Hon. Paul Twehues, Jr.
Hon. Gail Robinson

Dated 2/1/95

CAMPBELL CIRCUIT COURT
DIVISION NO. ONE

NABIL GHALI	)	
Appellant,	)	**No. 94-X-040**
-vs-	)	**Order**
COMMONWEALTH OF	)	
KENTUCKY,	)	
Appellee.	)	

This matter is before the Court on an appeal by the Defendant/Appellant, Nabil Ghali, from a Judgment entered on November 22, 1994 in the Campbell Count District Court overruling Appellant's Motion pursuant to Civil Rule 60.02 on the ground that no facts were presented justifying setting aside Appellant's conviction and that the Motion was not filed within a reasonable time. This Court has reviewed the record, considered all other matters and otherwise has advised sufficiently.

The review of this Court is limited to a determination of whether the trial court's actions were arbitrary or capricious, an abuse of discretion or contrary to law.

The case originated as a criminal case in Campbell County District Court in which the Appellant was convicted of four counts of Unlawful Transaction with a Minor on November 10, 1982. Appellant's Motion for a new trial claiming error in the original trial was denied on March 21, 1983. After an appeal in the Campbell County Circuit Court and proceedings in the Court of Appeals, the Circuit Court affirmed the conviction on October 31, 1985. The Court of appeals denied a Motion for an enlargement of time on April 1, 1986 and the appellate process ended.

Appellant moved to vacate the original Judgment under Civil Rule 60.02(f) on April 19, 1994 and the District Court entered an Order overruling his Motion on November 22, 1994, which is the subject of this appeal.

The only issue on appeal is whether or not the District Court erred in overruling Appellant's Motion to Set Aside his convictions pursuant to Civil Rule 60.02(f). Appellant argues that the lower court erred in denying his 60.02 Motion without conducting an evidentiary hearing on the "reasonable time" requirement and on the claims of ineffective assistance of counsel and prosecutorial misconduct. Appellant claims that the lower court judge lacked any facts on which to base his decision. He states that he is a

native of Egypt who is unfamiliar with the American legal system and relied on his legal counsel who was not familiar with criminal law. Also, he claims he was unaware for many years that there was an additional venue for challenging his conviction, retained present counsel in December of 1993 whose review of the file was difficult and time consuming.

A review of the trial court record regarding Appellant's Motion pursuant to Civil Rule 60.02(f) indicates that no facts were presented which are relevant that were not available prior to 1986 and that that Motion was filed 11 years post-conviction. Accordingly, the trial court's action was not an abuse of discretion. Therefore;

IT IS HEREBY ORDERED AND ADJUDGED

that the Order entered by the Campbell County District Court on November 22, 1994 is affirmed.

_____
William J. Wehr, Judge

Dated 4/18/95

COMMONWEALTH OF KENTUCKY
COURT OF APPEALS
NO. 95-CA-575-D

NABIL GHALI **MOVANT**

VS. **ON MOTION FOR DISCRETIONARY REVIEW FROM CAMPBELL CIRCUIT COURT ACTION NO. 94-XX-40**

COMMONWEALTH OF KENTUCKY **RESPONDENT**

* * * * * * *

ORDER

BEFORE: SCHRODER, EMBERTON, AND McDONALD, JUDGES.

This Court having considered the motion for discretionary review and the response thereto, and being otherwise sufficiently advised, ORDERS the motion be, and it is hereby, DENIED.

ENTERED: April 18, 1995

Wil Schroder
JUDGE, COURT OF APPEALS

Dated 8/16/95

SUPREME COURT OF KENTUCKY
95-SC-378-D
(95-CA-575)

NABIL GHALI — MOVANT

V. CAMPBELL CIRCUIT COURT
NO. 94-XX-40

COMMONWEALTH OF KENTUCKY — RESPONDENT

ORDER DENYING DISCRETIONARY REVIEW

The motion for review of the decision of the Court of Appeals is denied.

Leibson, J., not sitting.

ENTERED August 16, 1995.

Robert F. Stephens

Chief Justice